

Fact sheet

employment standards act

FAMILY MEDICAL LEAVE

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

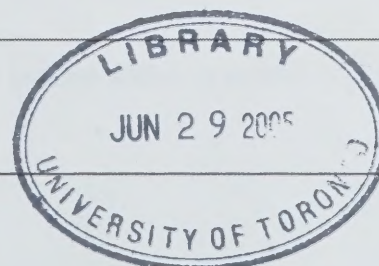
What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- a secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other work categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.



Qualifying for Family Medical leave

What is Family Medical leave?

Family Medical leave is unpaid, job-protected leave of up to eight (8) weeks in a 26-week period.

Family Medical leave may be taken to provide care and support to a specified family member for whom a qualified health practitioner has issued a certificate indicating that the family member has a serious medical condition and there is a significant risk of death occurring within a period of 26 weeks.

Although two or more employees may qualify for the leave, the eight (8) weeks of leave must be shared between the employees.

In certain limited circumstances, an employee would be entitled to take subsequent leaves to care for the same family member.

Who can take Family Medical leave?

All employees, whether full-time or part-time, permanent or contract, who are covered by the *Employment Standards Act 2000* [the *ESA*] are entitled to Family Medical leave. There is no requirement that an employee be employed for a particular length of time or that the employer employ a specified number of employees in order for the employee to qualify for Family Medical leave.

Are there Employment Insurance (EI) benefits available to an employee who takes Family Medical leave?

Under the Employment Insurance Act, six weeks of employment insurance benefits called "compassionate care benefits" may be paid to EI eligible employees who have to be away from work temporarily to provide care to a family member who has a serious medical condition with a significant risk of death within 26 weeks and who requires care and support from one or more family members.

The right to take time off work under the Family Medical leave provisions of the *ESA* is not the same as the right to the payment of compassionate care benefits under the federal Employment Insurance Act. The Ontario Ministry of Labour cannot assist an employee to obtain the compassionate care benefits.

For information about EI **compassionate care benefits**, you can call the nearest Human Resources and Skills Development Canada [HRSDC] - Employment Insurance Telemessage General Inquiries. The telephone number is listed in the blue pages of your telephone book, under "Employment and Unemployment". You can also visit HRSDC's internet site at http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/ei/types/compassionate_care.shtml&hs=tyt.

For what reasons can an unpaid Family Medical leave be taken?

An employee can take Family Medical leave to provide care and support to a specified family member who has a serious medical condition with a significant risk of death occurring within a period of 26 weeks. This medical condition and risk of death must be confirmed in a certificate issued by a qualified health practitioner.

What does providing care and support mean?

Care and support includes: providing psychological or emotional support, arranging for care by a third party provider or directly providing or participating in the care of the family member.

For which family members may a Family Medical leave be taken?

The specified family members for whom a Family Medical leave may be taken are:

- the employee's spouse (including same-sex spouse)
- a parent, step-parent or foster parent of the employee
- a child, step-child or foster child of the employee or the employee's spouse.

Is Family Medical leave the same as Emergency leave?

No. Family Medical leave is an unpaid leave of up to eight weeks that may be taken within a specified 26-week period to provide care and support to a specified family member for whom a qualified health practitioner issues a certificate stating that this family member has a serious illness with a significant risk of death occurring within a period of 26 weeks.

Emergency leave, on the other hand, is an unpaid leave of up to 10 days in each calendar year which can be taken because of personal illness, injury or medical emergency and the death, illness, injury, medical emergency or urgent matters relating to certain family members and dependent relatives. Further, only employees who work for employers that regularly employ at least 50 employees are entitled to Emergency leave and the persons with respect to whom an Emergency leave may be taken may differ from the family members specified for Family Medical leave. See the "Emergency Leave" Fact Sheet for further information about Emergency leave.

Am I entitled to both Family Medical leave and Emergency leave?

An employee may be entitled to both leaves. They are separate leaves and the right to each leave is independent of any right an employee may have to the other leave. An employee who qualifies for both leaves would have full entitlement to each leave.

Rights and Responsibilities

How long is a Family Medical leave?

A Family Medical leave can last up to eight (8) weeks within a specified 26-week period.

Does Family Medical leave have to be taken all at one time?

The eight (8) weeks of a Family Medical leave do not have to be taken consecutively but an employee may only take a leave in periods of entire weeks.

“Week” is defined for Family Medical leave purposes as a period of seven consecutive days beginning on a Sunday and ending on a Saturday. Week is defined in this way to correspond with the beginning and end of the week set for EI entitlement purposes.

Example:

Employee begins a Family Medical leave on a Wednesday, May 21

First week of leave is defined as beginning on the preceding Sunday (May 18) and will end on Saturday, May 24

Employee will have used one full week of the 8 weeks of Family Medical leave as of Saturday, May 24

Do I have to share a Family Medical leave with others?

The eight (8) weeks of a Family Medical leave must be shared by all employees who take a Family Medical leave to provide care and support to a specific family member. For example, if one spouse took six (6) weeks of Family Medical leave to care for his or her child, the other spouse would be able to take only two weeks of Family Medical leave.

Can an employee take more than one 8-week leave to provide care for the same family member?

If an employee has taken a leave to care for a family member who has not passed away within the 26-week period referred to in the medical certificate and a health practitioner issues a subsequent certificate(s) stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, the employee would be entitled to an additional eight (8)-week Family Medical leave(s).

(Note: whether or not this employee would be eligible for any or further EI benefits would be a matter to be determined by the federal *Employment Insurance Commission [EIC]*.)

When can the Family Medical leave be taken?

If a qualified health practitioner issues a certificate stating that a specified family member has a serious medical condition and there is significant risk of death occurring within a period of 26 weeks, an employee may take the Family Medical leave within that 26-week period.

Where multiple certificates are obtained by employees wishing to take leave with respect to the same family member, the 26-week period within which the Family Medical leave must be taken is determined by the first certificate issued by a qualified health practitioner.

When can a Family Medical leave begin?

The earliest an employee may start the leave is the first day of the week in which the 26-week period identified on the medical certificate begins. Since week is defined for the purposes of Family Medical leave as a period of seven (7) consecutive days, beginning on a Sunday and ending on a Saturday, the 26-week period set out in the medical certificate should always start on a Sunday. However, if a certificate provides that the 26-week period begins on a day other than a Sunday, it will be deemed to have begun on the preceding Sunday. Likewise, regardless of what day of the week the employee begins the leave, the week of Family Medical leave would begin on the preceding Sunday.

Example:

On Wednesday, June 13, a medical practitioner issues a certificate stating that the individual (in this example, the employee's spouse) has a serious medical condition with a significant risk of death within a period of 26 weeks. Because a week is defined as a period of 7 consecutive days beginning on Sunday and ending on Saturday under the Family Medical leave provisions, the 26-week period is considered to begin Sunday June 10. Assuming the employee wished to commence the leave on the day the certificate was issued, the first week of the leave would also begin on Sunday June 10.

When must a Family Medical leave end?

The latest day an employee could remain on leave would be:

- the last day of the week in which the family member dies
- OR
- the last day of the week in which the 26-week period expires
- OR
- the last day of the eight (8) weeks of Family Medical leave

whichever is earlier. Based on the definition of "week" for Family Medical leave, the leave would always end on a Saturday.

Does the employee need to have the medical certificate before he or she can take the leave?

No. An employee might commence the leave before obtaining the medical certificate, however, the right to the leave is dependent upon the issuance of the medical certificate **and** the leave must be completed within the 26-week period specified in that certificate. If the employee could not subsequently produce the certificate and/or if the leave were not completed within the 26-week period, the employee would **not** have had a right to the Family Medical leave under the Act and would not be entitled to any of the protections afforded to employees on such a leave.

Can the employer ask for proof that an employee is eligible to take a Family Medical leave?

An employer is entitled to ask an employee for a copy of the certificate of the qualified health practitioner to provide proof that he or she is eligible for a Family Medical leave. The employee is required to provide that certificate as soon as possible after the employer requests. The certificate must state that the family member has a serious medical condition with a significant risk of death occurring within a specified 26-week period.

The employee is responsible for obtaining and paying the costs (if any) of obtaining the certificate. The Ministry of Labour cannot assist the employee in obtaining the certificate.

Who is a qualified health practitioner?

A qualified health practitioner is a person who is qualified to practise medicine under the laws of the jurisdiction in which care or treatment of the family member is being provided.

In Ontario, at this time, only medical doctors can issue a certificate.

What if I cannot obtain a certificate?

Eligibility for Family Medical leave is dependent upon the issuance of the medical certificate (a copy of which must be provided to the employer if requested). If you cannot obtain a certificate from a qualified health practitioner, you are not entitled to the leave and will not have job protection if you do not report for work. Your employer may voluntarily agree to provide you with time off work in such a case, but an employer is **not** required to so under the Act.

How do employees tell their employers about their plans to take a Family Medical leave?

An employee must inform the employer in writing that he or she will be taking a Family Medical leave of absence.

What if there is no time for the employee to give notice?

If an employee has to begin a Family Medical leave before notifying the employer, he or she must inform the employer in writing as soon as possible after starting the leave.

What if the employee fails to give notice?

An employee who doesn't give notice does not lose his or her right to a Family Medical leave.

Can an employer fire an employee for taking Family Medical leave?

No. An employer can't fire or otherwise penalize an employee in any way for taking, planning on taking, being eligible or being in a position to become eligible to take a Family Medical leave.

What happens to an employee's pay, seniority and benefits?

Employers do not have to pay wages when an employee is on Family Medical leave.

Employees earn seniority and credit for length of service and length of employment while on Family Medical leave—just as if they had stayed at work.

While an employee is on Family Medical leave, the employer must continue to pay its share of the premiums to certain benefit plans (i.e., pension plans, life insurance plans, accidental death plans, extended health insurance plans and dental plans) that were offered before the leave.

For further details, see the *ESA* and its regulations.

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer - including an order to comply with the *ESA*.

This Fact Sheet provides general information about Family Medical leave as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

- | | |
|--|--|
| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
| <input type="checkbox"/> Family Medical leave | <input type="checkbox"/> Retail Workers |
| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the ESA and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

